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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF APPLICATION
 OF DESERT HILLS WATER
 COMPANY FOR APPROVAL OF
 TRANSFER OF ITS UTILITY
 ASSETS TO THE TOWN OF CAVE
 CREEK, PURSUANT TO A.R.S. § 40-
 285 AND FOR CANCELLATION OF
 ITS CC&N

DOCKET NO: W-02124A-06-0717

POST HEARING BRIEF OF APPLICANT

At the hearing on the application of the Desert Hills Water Co., Inc. ("Applicant") for approval of the transfer of its utility assets to the Town of Cave Creek, held on February 27, 2007, certain legal questions were raised, and the Applicant requested and received permission to address these matters and to summarize the position of the Applicant in a post hearing brief. This brief will address the pending legal questions and summarize the Applicant's position. The Applicant was also asked to consult with Staff concerning the provision in Section 5.1 of the Asset Transfer Agreement setting the closing for no later than April 15, 2007. Applicant has advised the Staff that both the Applicant and the Town have agreed to extend the time for closing to May 15, 2007.

INTRODUCTION

The Applicant is a corporation wholly owned by the Town of Cave Creek ("Town"). The Town acquired the Applicant on September 12, 2006, approximately seventeen months after the Town had filed a condemnation action in the Maricopa County Superior Court to acquire the water utility assets of the Cave Creek Water Co. ("CCWC") and Pacer Equities ("Pacer"). CCWC and Pacer have been the entities providing water service to residents of the Town and to residents in a portion of the Town of Carefree. The service area of CCWC

1 is adjacent to and immediately to the east of the service area of the Applicant. The source
2 of water to CCWC has been one sixteen inch pipeline running thirteen miles from the
3 Central Arizona Project ("CAP") aqueduct to the CCWC/Pacer treatment plant in
4 downtown Cave Creek. The acquisition of CCWC had been authorized by the voters of the
5 Town in September 2002 and again in a bond election in May 2005.

6 The Town Manager and President of the Applicant, Usama Abujbarah ("Manager"),
7 testified at the hearing that the Town's purchase of the Applicant was the implementation
8 of

9 "a strategy for services in the area ... we found that in the best interests of the
10 whole community and the area, if we can integrate the water supply system
11 and the water delivery system from Anthem and the City of Phoenix through
12 Desert Hills Water Company area, Cave Creek Water Company area and the
13 town of Carefree—which the town Carefree has interconnection with the City
14 of Scottsdale—the vulnerability for the area, that we have only one water
15 line, pipeline that delivers the CAP water to the Cave Creek Water Company
16 on Cave Creek Road. And we thought that the capacity of that line and the
17 reliability of that line would be subject to stress in the future. And we
18 thought, in developing our strategy for the area, that we need more reliable
19 water services in the whole area, that we serve the whole community and
20 Desert Hills area and Cave Creek area and Carefree area."

21 Tr. at 44, line 20 to 45, line 14.¹

22 The Manager also testified that a settlement of the condemnation case was imminent
23 and could be taken to the Town Council on March 5, 2007. In fact, the settlement was
24 approved by the Council on March 5, 2007; the settlement agreement and bargain sale
25 agreement were signed by the parties on March 6, 2007. On March 7, 2007, Judge Ruth
26 Hilliard signed a stipulated order for immediate possession and a stipulated final judgment
27 in condemnation. The Town took possession of the CCWC/Pacer water system in the
28 afternoon of March 7, 2007 and has, through its contractor American Water Co., been
operating the system since then. See late filed Exhibits A-9 and A-10. In addition, the
Town has, through the same contractor, taken over interim management of Sabrosa Water

¹ "Tr." refers to the transcript filed March 9, 2007 of the hearing held February 27, 2007 in this matter.

1 Co. under a letter agreement between the Town and the Utilities Division of the
2 Commission. See Exhibit 6 to the Settlement Agreement which is part of late filed Exhibit
3 A-9.

4 There is a temporary interconnection between the Anthem water supply system of
5 Arizona American Water Co. and the Applicant which the Town intends to make
6 permanent as a backup supply for the Applicant and the Town. There is an interconnection
7 between the Applicant's water system and the CCWC system which the Town is now
8 operating. The Town intends to increase the capacity of the interconnection. Troy Day of
9 American Water and Arizona American testified that his company has an interconnection
10 with the City of Phoenix and an agreement to purchase up to five million gallons per day
11 ("mgpd"). The quantity can be increased to eight mgpd upon request by Arizona
12 American. Tr. at 139, line 19 to 140, line 6. The existing pipeline is capable of handling
13 up to twelve mgpd. Tr. at 145, lines 11-12. This water from Phoenix is a portion of the
14 water available to the Applicant through Arizona American. In the long term, the Town
15 plans to negotiate directly with Phoenix for an additional water supply and/or emergency
16 backup. Tr. at 53, lines 18-21.

17 CCWC has a CAP allocation and subcontract for 1,800 acre-feet of Colorado River
18 water; it also has an allocation of 806 additional acre-feet by reason of the Arizona Water
19 Settlement Act that is scheduled to be firmed up by the end of 2007. The new CAP
20 subcontract for 2,606 acre-feet of water, with a term of 100 years, is being processed by the
21 Central Arizona Water Conservation District ("CAWCD"). See late filed Exhibit A-11.
22 CCWC and the Town have jointly advised the CAWCD of the transfer of possession of the
23 CCWC system to the Town and of the contemplated transfer of title. The settlement
24 agreement includes the transfer of the CAP subcontract and entitlements to the Town. The
25 Town currently has 1,800 acre-feet of CAP water available; current CCWC use has been
26 1,600 acre-feet per year. Tr. at 168, line 15 to 169, line 22. By the end of this year, the
27 Town will have 2,600 acre-feet of CAP water available to meet customer demands.

28 The Town has applied to the Water Infrastructure Finance Authority ("WIFA") for a

1 \$4 million financing which will provide funds for the Town to pay for capital
2 improvements to the Desert Hills and CCWC systems that will increase the reliability of
3 both systems. WIFA will not approve this financing until the transfer of the Desert Hills
4 assets from the Applicant to the Town has occurred.

5 Applicant has been asked whether a town has the legal authority to acquire a water
6 utility which is entirely outside its jurisdiction. Applicant was also asked to provide
7 information concerning the rights and remedies of Desert Hills' customers if the Town
8 owns and operates the system.

9 **The Town Has Legal Authority to Acquire Utility Assets Outside Its Boundaries**

10 A.R.S §9-522 provides that a municipality may acquire a utility undertaking "within
11 or without its corporate limits." The Arizona Supreme Court, in *Citizens Utilities Water*
12 *Co. v. Superior Court*, 108 Ariz. 296, 497 P.2d 55 (1972), cert. den. 93 S. Ct. 462, 409 U.S.
13 1022, 34 L.Ed.2d 314, held that the City of Tucson could condemn water company
14 properties outside the city and unconnected with the city. See also *Flecha Caida Water Co.*
15 *v. City of Tucson*, 4 Ariz. App. 331, 420 P.2d 198 (1966). Arizona law allows the Town to
16 acquire the assets of Applicant.

17 **The Town Has Obligation to Nonresident Customers to Charge Reasonable Rates**

18 With regard to the rights and remedies of customers of a municipal utility who do
19 not live within the municipality, the Arizona law has developed over the years. General
20 common law is that when a governmental entity provides public utility services pursuant to
21 statutory authority, that governmental entity is required to charge only reasonable, non-
22 discriminatory rates for its services.

23 **Kasun, Sabin and Jung Decisions Establish Common Law Rights**

24 This principle appeared in Arizona case law in 1939, with the decision in *City of*
25 *Phoenix v. Kasun*, 54 Ariz. 470, 97 P.2d 210 (1939). In *Kasun*, a group of consumers filed
26 suit against the City of Phoenix, asking for an injunction to prevent the City from enforcing
27 an ordinance that increased the water rates for consumers outside the city limits. *Kasun*, 55
28 Ariz. at 472, 97 P.2d at 211. The consumers claimed that the higher rate was exorbitant,

1 excessive, oppressive, unreasonable, and confiscatory. *Id.* The City defended, claiming
2 that the relationship between the City and consumers who lived outside the city limits was
3 not a question of public duty, but a question of a voluntary contract, which the court had no
4 power to rewrite. *Id.* at 474, 97 P.2d at 212. The court's focus in *Kasun* was whether the
5 City was operating as a "public utility" as required by statute (and therefore subject to
6 common law duties) or whether it was acting in a voluntary, private capacity, in which case
7 the court would examine the issue based on contract law. In *Kasun*, the court concluded
8 that the City was providing water to consumers outside its city limits not pursuant to a
9 statutory, legal obligation, but on a voluntary basis. *Id.* at 480, 97 P.2d at 214. Under the
10 facts of that case, therefore, the consumers had no basis upon which to complain to the
11 court that the rates charged were unreasonable or discriminatory.

12 In *Town of Wickenburg v. Sabin*, 68 Ariz. 75, 200 P.2d 342 (1948), the Arizona
13 Supreme Court visited the issue again. In *Sabin*, however, the consumer resided within the
14 Town of Wickenburg, which was the owner of both the municipal water and electric
15 distribution systems within the boundaries of the town. *Sabin*, 68 Ariz. at 76, 200 P.2d at
16 342. The consumer filed suit against the town after the town refused to provide him with
17 water or electric service unless he paid an extra deposit that other residents did not have to
18 pay. The consumer claimed that the town was acting in an arbitrary and unjustly
19 discriminatory manner against him. The court in *Sabin* noted the general rules on
20 discrimination pertaining to public service corporations:

21 The rule forbidding unjust discrimination has been variously expressed: The
22 charges must be equal to all for the same service under like circumstances. A
23 public service corporation is impressed with the obligation of furnishing its
24 service to each patron at the same price it makes to every other patron for the
25 same or substantially the same or similar service. It must be equal in its
26 dealings with all. It must treat the members of the general public alike. All
27 patrons of the same class are entitled to the same service on equal terms. ...
28 The common law upon the subject is founded on public policy which requires
one engaged in a public calling to charge a reasonable and uniform price to
all persons for the same service rendered under the same circumstances.

Id. at 77-78, 200 P.2d at 343-44 (emphasis added).

The court then added that, with respect to discrimination in the public utility field, a

1 governmental entity stands in the same position as a private corporation. *Id.* The court
2 sustained the judgment in favor of the consumer, finding that the consumer lived within an
3 established "service zone," where all the Town had to do was make an ordinary service
4 connection with existing lines in order to service the consumer's property. *Id.* The court
5 also found that the consumer had suffered arbitrary and unjust discrimination at the hands
6 of the Town when the Town attempted to exact an extra deposit from him that was not
7 required of others. *Id.* at 80, 200 P.2d at 345.

8 The Supreme Court took up the issue a third time in *Jung v. City of Phoenix*, 160
9 Ariz. 38, 770 P.2d 342 (1989). In *Jung*, a group of consumers brought a civil rights action
10 under 42 U.S.C. § 1983 against the City of Phoenix seeking damages and injunctive relief
11 because the City charged different water rates for consumers depending on whether they
12 resided inside or outside the city limits. The suit was spurred by the fact that the City had
13 enacted an ordinance which doubled the water rates for those outside the city limits. *Jung*,
14 160 Ariz. at 39, 770 P.2d at 343. The court reiterated the general principle from *Kasun*
15 that, absent a statute, a city has no duty to provide water to the non-residents, and can
16 contract on any terms acceptable to the parties. *Id.* In *Jung*, however, there was a statute
17 that compelled the City to provide water service to non-residents (A.R.S. § 9-516(C)).
18 Because there was a statutory duty, the court held that there was also a common law duty
19 that the charges for such services be reasonable. *Id.* at 40, 770 P.2d at 344. Thus, although
20 the plaintiffs in *Jung* could not maintain a Section 1983 claim, the court held that they
21 would be permitted to pursue a common law claim under which they could attempt to
22 prove that the City's rate schedule was arbitrary and unreasonable and that the
23 discrimination in rates had no reasonable basis. *Id.* at 41, 770 P.2d at 345. Under the
24 decision in *Jung*, a municipality may only charge reasonable rates for utility services
25 provided to non-residents.

26 A.R.S. § 9-511.01 Provides Non-Residents a Statutory Right to Reasonable Rates

27 In 1992, the Arizona Legislature enacted A.R.S. § 9-511.01 to establish procedures
28 which municipalities must follow if they seek to increase domestic water rates. The statute,

1 as amended in 2006, declares that any proposed water rate, fee or service charge must be
2 reasonable and that "every unjust or unreasonable rate or charge demanded or received by a
3 municipality is prohibited and unlawful." The statute requires that, in order to increase a
4 water rate, the municipality must prepare a written report or supply data supporting the
5 increase and make a copy available to the public at least 30 days before the hearing on the
6 increase; and it must hold a public hearing on the increase and give notice to the public at
7 least 20 days before the hearing. For a city or town to adopt water rates for non-residents
8 that were not just and reasonable would be unlawful.

9 **Town Will Provide for Non-Resident Participation in Water Utility Matters**

10 In his prepared testimony, Exhibit A-3, the Manager stated that the Town will take
11 no action to change the rates charged to customers in the Desert Hills system until the
12 Town has provided notice and held public meetings providing customers the opportunity to
13 be heard; at least one of these meetings will be held within the Desert Hills service area.
14 The Manager also testified to the same effect at the hearing. Tr. at 41, lines 9-25 and at
15 105, line 15 to 106, line 16. He also testified that the Town has no plans to increase the
16 rates in the Desert Hills service area.

17 At the hearing, the Manager testified that he plans to establish a Citizens' Water
18 Advisory Committee to review plans, policies, the master plan, the capital program, and
19 rates and fees with regard to the Town's water utility, and advise with the Town Engineer,
20 the Manager, and the Council. Tr. at 40, line 7 to 41, line 8. He plans to establish the
21 Committee in March 2007 with ten members, four from the Desert Hills area, five from
22 Cave Creek and one from the Carefree area served by the Town. Meetings of the
23 Committee would be open to the public. Tr. at 82, line 19 to 85, line 25.

24 When the Commission approved the transfer of the assets of Metropolitan Water
25 Co., a private utility located in the unincorporated portion of Pima County, to the City of
26 Tucson, the Commission noted that residents of the area would have an opportunity to
27 appear before the City's water advisory committee and before the city council. Here,
28 residents of the Desert Hills area will not only have the opportunity to appear before the

1 Committee, they will have four residents actually serving as full members of the
2 Committee. This, coupled with Arizona's statutory requirements that any rate increase be
3 fully justified by a report and data, and the public hearing requirements, gives Desert Hills
4 area residents substantial opportunities to participate in the entire operation of the water
5 utility.

6 **Attorney General Opinion No. 62-7 Supports Approval of the Application**

7 In connection with the acquisition by the City of Tucson of the assets of
8 Government Heights Water Company in 1962, the Attorney General issued a
9 comprehensive legal opinion outlining the duties and jurisdiction of the Arizona
10 Corporation Commission in reviewing, under A.R.S. § 40-285, the acquisition of a
11 privately owned water utility company by a municipality. After citing Arizona court
12 decisions and decisions in California (from whose statutes A.R.S. § 40-285 was derived),
13 Opinion No. 62-7, in Conclusion #8, concluded that:

14 In the situation when the entire assets of the private utility are acquired by a
15 municipality and all the customers are to be served by it, the utilities' public
16 service function is ended. The Corporation Commission cannot prohibit the
17 sale of its assets. The hearing and order must be directed only to a
18 determination that there are no other customers or persons who have been
19 served by the private utility and that it will, in fact, have been relieved of all
its duties to serve such customers. The Commission's determination is to be
made relating only to these matters. They may not enter an order denying the
public utility the right to dispose of its assets, except upon the grounds that
the utility is not in fact terminating its function in the service of its customers.

20 It is also appropriate for the Commission to assure the orderly disposition of the
21 remaining obligations of the public utility and to ascertain that all such obligations have
22 been properly provided for. In the present case, it is unquestioned that the Town has
23 undertaken to provide water service for all the customers of the Applicant. A.R.S § 9-
24 516(C) requires that a town acquiring the facilities of a corporation rendering utility
25 services without the boundaries of the town shall not discontinue such service. The Town
26 has, as a practical matter, through American Water as contractor, been providing water
27 service to the Applicant's customers since September 12, 2006—and with a minimum
28 number of customer complaints.

1 In the Transfer Agreement attached to the Application, the Town agrees to assume
2 all customer service accounts, customer deposits and meter deposits as well as all the
3 Applicant's obligations under Permits and Assumed Contracts. The Assumed Contracts
4 include all active line extension agreements, a will serve letter concerning Cielo Grande
5 and vehicle lease agreements. The Town agreed not to raise water rates and charges for at
6 least a year. And the Town agreed to give a credit of minimum monthly payments to
7 approximately 189 water customers for service interruptions experienced between June and
8 September 2006.

9 In sum, all the Applicant's customers are being served and will continue to be
10 served after the transfer of assets to the Town. The Town has agreed to assume all
11 refundable deposits, all line extension agreements and outstanding will serve letters. The
12 conditions for approval outlined in Opinion No. 62-7 have been met.

13 **The Town Has an Adequate Long-Term Water Supply to Serve Desert Hills Area**

14 Questions were raised at the hearing concerning the adequacy of the water supply to
15 serve the Desert Hills in the summer months of 2007 and the long-term adequacy of the
16 water supply. With regard to the summer of 2007, Arizona American will be providing
17 sufficient water through the Anthem interconnection to meet the needs of the Desert Hills
18 area. The Applicant has an agreement for supplemental water service with Arizona
19 American that ends March 31, 2007. The Applicant, the Town, and Arizona American
20 have negotiated a new water supply agreement to take effect April 1, 2007. The agreement
21 is being processed and is scheduled for consideration by the Town Council at its evening
22 meeting on March 19, 2007.² Mr. Troy Day of Arizona American testified that, if the new
23 agreement is not signed by April 1, Arizona American will do an "emergency contract for
24 whatever period of time the town felt like we needed ... it's not our intention to cut that
25 water off." TR. at 139, lines 6-14. Mr. Day testified: "I think there is sufficient amount of
26

27 ² The final form of the Water Service Agreement now being circulated for final approval is
28 late filed Exhibit A-16.

1 water to serve Desert Hills with the Anthem interconnect.” Tr. at 140, lines 13-15; and that
2 “we can adequately supply Desert Hills with that Anthem connection for the summer....”
3 Tr. at 149, lines 2-4.

4 The water supply agreement with Arizona American that is being processed has two
5 aspects. The wholesale water agreement provides for delivery of up to two mgpd through
6 the interconnect if required. (Mr. Day testified that the maximum daily delivery through
7 the interconnect in the summer of 2006 at Desert Hills was two-thirds of a million gallons.
8 Tr. at 137, lines 5-15.) The long-term agreement is to wheel and treat water acquired by
9 the Town. The initial term of the agreement is ten years with an automatic ten-year
10 renewal at the end of each term unless one party gives notice of intent not to renew. This is
11 intended to be a permanent arrangement for wheeling and treatment and the provision of
12 emergency water service only during interruptions to the delivery of the Cave Creek-
13 Owned Water. The wholesale water supply arrangement is intended to be short-term to
14 give the Town an opportunity to acquire additional water. If the Town has not acquired
15 such water by March 31, 2010, Arizona American will have the right, at its discretion, to
16 terminate the agreement. Tr. at 141, lines 2-14 and at 151, line 19 to 152, line 12.

17 With regard to the long-term supply of water for the Desert Hills area, the Town has
18 now taken possession of the assets of the Cave Creek Water Company (“CCWC”) under a
19 court judgment and will own those assets as soon as financing has been completed and the
20 judgment has been paid. The assets include a CAP allocation of 1,800 acre-feet and an
21 additional 806 acre-feet that will be finalized by the end of 2007. The CAWC is currently
22 processing a new CCWC subcontract for 2,606 acre-feet of water for 100 years. See late
23 filed Exhibit A-11. CCWC and the Town have informed the CAWCD that all CAP
24 subcontracts and entitlements will be assigned to the Town when the Final Order in
25 Condemnation is entered. Meanwhile, the Town will receive the CAP water, place orders
26 for such water, and make the required reports concerning deliveries. See late filed Exhibit
27 A-12.

28 With 2,606 acre-feet of CAP water, the Town will have more than sufficient water

1 after the summer of 2007 to provide for the current water requirements of its Desert Hills
2 and Cave Creek water systems. The current level of use in the Cave Creek system is about
3 1,600 acre-feet of water per year. For long-term growth, the Town will be requiring new
4 subdivisions to bring their own water. For instance, intervenor Abbyron will be drilling a
5 well at Desert Hills with expected production of 200 gallons per minute ("gpm") of which
6 only 44 gpm will be needed by the development. Tr. at 125, line 25 to 126, line 8. The
7 Master Plan being prepared by CH2MHill will outline the opportunities for long-term water
8 supply, including the drilling of additional wells at Desert Hills. Staff witness Linda Jaress
9 testified "that, as testified today by the various witnesses, that the company the town is
10 making appropriate efforts to solve the problem of long-term water supplies and are taking
11 appropriate steps to resolve that." Tr. at 197 line 23 to 198 line 2.

12 While the water supply will be adequate to serve both the Desert Hills and the Cave
13 Creek areas, there are important infrastructure needs to enable the Town to make use of that
14 supply for the benefit of both the Desert Hills area and the Cave Creek area. Additional
15 storage is needed as well as additional treatment capacity. The Master Plan will detail
16 those needs and their cost. To provide the funds for this infrastructure, the Town has
17 applied to WIFA for financing; WIFA appears to be favorably disposed to approve the
18 application, but will only do so after the Desert Hills Water Co. assets have been
19 transferred to the Town.

20 **Applicant Is in Compliance with MCESD Requirements**

21 During the hearing, the status of the Applicant with regard to Maricopa County
22 Environmental Services Department ("MCESD") requirements was questioned. Mr.
23 McLean of CH2MHill testified to the process he went through to satisfy the MCESD and
24 that after the process was completed he was advised by MCESD that the Applicant was in
25 compliance. Tr. at 174, line 17 to 177, line 7. This was confirmed in an e-mail from
26 Aimee Upton of MCESD to Usama Abujbarah, town manager, stating that the Town "is
27 currently in compliance with the Stipulated Settlement Agreement." See late filed Exhibit
28 A-13.

1 There was confusion about whether a second NOV had been issued with regard to
2 the temporary Anthem interconnect. The County had advised the Town that by April 1,
3 2007 plans and specs for a permanent interconnect would have to be filed with the County
4 or the temporary interconnect would have to be disconnected. Until late February, the
5 Town had thought it would be possible to disconnect the temporary interconnect and
6 supplement the Desert Hills' water supply from the Cave Creek system in the summer of
7 2007. When it became apparent that the Cave Creek system needed additional storage and
8 treatment facilities in order to supplement the Desert Hills' system in the summer, the
9 Town changed its plans and decided to retain the interconnect. On February 23, 2007, the
10 Town sent a letter to MCESD advising that the temporary interconnect would not be
11 disconnected and stating that after the Master Plan Reports are received the Town will
12 begin the process of application for permits and design for the permanent Anthem
13 connection. See Exhibit A-8. MCESD recently responded and in a letter dated March 12,
14 2007 gave the Town an additional month to prepare and submit plans and specifications to
15 initiate the plan approval process for the permanent connection. The letter states "In order
16 to maintain the system in compliance, Desert Hills Water Company will need to begin the
17 plan approval process by Friday, May 4, 2007." See late filed Exhibit A-14. It is apparent
18 from this letter that there is no outstanding NOV against the Applicant, since the MCESD
19 provides the conditions for maintaining the system in compliance. There could only have
20 been an NOV after April 1 if the Applicant had failed to get an extension of the time to
21 apply for the permanent interconnection and the temporary interconnection had remained
22 and no application for permanent interconnection had been made.

23 The Manager testified that the Town plans to build a permanent interconnection with
24 the Anthem system. Tr. at 48, lines 16-25. The MCESD letter sets the time frame for the
25 Applicant and Town to begin the application process for that project.

26 **Notices Were Mailed to 2,916 Landowners at Desert Hills**

27 The affidavit of Whitney Burk establishes that notices of the February 27, 2007
28 hearing were mailed 2,916 owners of approximately 3,200 parcels of land in the

1 Applicant's certificated area. It establishes that such a notice was sent to Barry Sprink.
2 See late filed Exhibit A-15.

3 **CONCLUSION**

4 The Applicant has established all the prerequisites for Commission approval of the
5 transfer of assets to the Town. Approval of the Application is supported by Staff and by
6 both intervenors in the case. No evidence was offered in opposition to the Application.

7 Under the Town's management, the Applicant has since September 12, 2006
8 completed the Cloud Road Booster, rehabilitated wells four and five, and provided reliable
9 service to the Applicant's customers. The number of complaints has been minimal. With
10 the acquisition by the Town of the Cave Creek Water Co. and Pacer Equities assets, the
11 Town is in a position to provide increased service reliability to both the Desert Hills area
12 customers and the Cave Creek area customers. The Desert Hills' customers will no longer
13 have to rely entirely on groundwater wells and the Cave Creek customers will no longer
14 have to rely entirely on one long CAP transmission line. The Town will be constructing
15 additional treatment and storage facilities at Cave Creek that will allow for the provision of
16 summer peak service for Desert Hills' customers, and will construct a permanent
17 interconnection with Arizona American that will allow for emergency supply in the event
18 of an outage in the CAP line or boosters. With the acquisition of the Cave Creek system,
19 the Town has an adequate water supply for both Desert Hills and Cave Creek. New
20 developments will be asked to bring their water supplies with them. And the Town has
21 employed a consultant to assist in locating additional water supplies if these supplies are
22 not adequate.

23 In order to develop the infrastructure to accomplish the physical integration and
24 increased reliability for the two water systems, the Town will need to complete the \$4
25 million financing now pending at WIFA. This cannot be completed until the transfer of
26 assets from Applicant to the Town has been completed. The Applicant respectfully
27 requests:

28 A. That the Commission issue an Order approving the Asset Transfer

1 Agreement;

2 B. That the Desert Hills Water Co., Inc. CC&N be extinguished;

3 C. That recommendations for the Order be submitted to the Commission for
4 action at the May 2007 open meeting.

5 RESPECTFULLY SUBMITTED this 19th day of March, 2007.

6 SACKS TIERNEY P.A.

7
8 By: 

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11
12 ORIGINAL and thirteen (13) copies of the
13 foregoing were delivered
this 19th day of March, 2007, to:

14 Docket Control
15 Arizona Corporation Commission
1200 W. Washington St.
16 Phoenix, AZ 85007

17 COPY of the foregoing hand-delivered
this 19th day of March, 2007 to:

18 Lyn Farmer
19 Assistant Chief Administrative Law Judge
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